

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1771.01
COMPLAINT INVESTIGATOR:	Susan Miner
DATE OF COMPLAINT:	June 5, 2001
DATE OF REPORT:	July 5, 2001
REQUEST FOR RECONSIDERATION:	yes/revisions are underscored
DATE OF CLOSURE:	October 12, 2001

COMPLAINT ISSUES:

Whether the Penn-Harris-Madison School Corporation and the Mishawaka-Penn-Harris-Madison Joint Services violated:

- 511 IAC 7-27-7(d) with regard to the school's alleged continued implementation of an IEP that is more than twelve months old.
- 511 IAC 7-22-1(b) with regard to the school's alleged failure to ensure that the notice of procedural safeguards (sent with notification of a case conference committee meeting) is printed in a format that is easy to read.
- 511 IAC 7-23-2(b) and (c) with regard to the school's alleged failure to notify the parents of the school's response to the parent's request to amend the student's educational record within ten business days of the parent's request.

During the course of the investigation the following issues were added:

- 511 IAC 7-27-2(d) with regard to the school's alleged failure to include the purpose of the case conference committee meeting on the notice for the meeting scheduled on June 8, 2001.
- 511 IAC 7-27-4(a)(3) with regard to the school's alleged failure to convene a case conference committee meeting at the parent's request to conduct a manifestation determination.

FINDINGS OF FACT:

1. The student is sixteen years old and has completed the ninth grade. He is eligible for special education and related services as a student with an other health impairment.
2. The report of the case conference committee and individualized education plan dated May 22, 2000, indicates an initiation date of August 23, 2000, and a duration date of June 7, 2001.
3. The font size and type on the copy of parental rights that is mailed with the notice of case

conference committee meeting is a 4 point sans serif font. The following statement, in larger type, is at the top of the document: "Please Note: The size of the print has been reduced for mailing purposes. You will receive an original copy at the case conference." This copy is reduced to 1 page front and back. With limited exception, the size of the print renders the document unreadable.

4. The font size and type on the copy of parental rights that is provided to parents during the case conference committee meeting is in an 8 point sans serif font. This copy is 4 pages front and back and is easily readable.
5. The parent sent a written request to amend the student's educational records to the director of special education on May 11, 2001. The school responded to the parent's request on June 18, 2001, and acknowledges that it failed to respond within the requisite ten business days.
6. The case conference committee convened on June 4, 2001, for the purpose of an annual case review and transition planning. However, the student was not present at this meeting, and the parents and school agreed to reconvene on June 6, 2001. The case conference committee reconvened on June 6, but was unable to conclude. The notes from the June 6 meeting state the case conference committee will tentatively reconvene for the purpose of "re-doing IEP and a manifestation determination" and tentatively scheduled the meeting for June 8, 2001. The Notice of Case Conference for the June 8 meeting did not indicate the purpose of the meeting.
7. On June 5, 2001, the complainant sent a letter to the director of special education requesting that a manifestation determination be conducted as part of the case conference committee meeting already scheduled for June 6, 2001. The complainant believes that the case conference meetings subsequent to the April 12 meeting were a continuation of that case conference committee meeting, as well as a continuation of the manifestation determination process.
8. On June 7, 2001, the director of special education sent a letter to the complainant, offering to reconvene the case conference committee meeting again on June 8, 2001, but advised that the meeting would not include a manifestation determination because there was no pending disciplinary action and no pending removal that would constitute a change of placement.
9. Although there was no pending disciplinary action, the parent requested the CCC conduct a manifestation determination. The discussion notes from the case conference committee report dated April 12, 2001, state, "[the director of special education] introduced the meeting as a manifestation determination." However, the notes subsequently state "It was decided as a committee that we would not have a manifestation determination, instead an FBA would occur next. " The functional behavioral assessment was completed and subsequently discussed at a case conference committee meeting on May 10, 2001. A behavioral intervention plan and IEP to address the student's behaviors has been discussed but have not been agreed upon.
10. Prior to the April 12, 2001, case conference committee meeting, the student had received three disciplinary actions: a referral dated March 2, 2001, for truancy; a referral on March 5, 2001, for fighting; and a referral on March 22, 2001, for insubordination, physical aggression.

and sexual harassment. The first referral resulted in attendance at Saturday school, and the second and third referrals each resulted in three-day suspension beginning March 6 and March 23, 2001, respectively.

CONCLUSIONS:

1. Finding of Fact # 2 indicates that the IEP was in effect from August 23, 2000, through June 7, 2001, and did not exceed a twelve-month period. Therefore, no violation of 511 IAC 7-27-7(d) is found.
2. Findings of Fact #3 and #4 reflect that the font size and type utilized on the copy of parental rights mailed with the notice of case conference committee meeting is too small for easy reading. The notice of procedural safeguards, including the notice sent with the notice of case conference committee meeting, must be printed in a format that is easy to read. Providing the parent with a readable copy of the notice at the time of the case conference committee does not suffice. Therefore, a violation of 511 IAC 7-22-1(b) is found.
3. Finding of Fact #5 indicates the school failed to respond to the parent's request to amend the student's educational records within the requisite ten business days. Therefore, a violation of 511 IAC 7-23-2(c) is found.
4. Findings of Fact #6, #7, and #8 reflect that the case conference committee meeting scheduled for June 8, 2001, was the continuation of the case conference committee meeting that began on June 4, 2001, and was reconvened on June 6, 2001. The purpose of the June 4 case conference committee meeting was the annual case review and transition planning. Although the notes from the June 6 continuation of the case conference committee meeting indicated that the committee would reconvene to revise the IEP and conduct a manifestation determination, a letter from the director of special education to the parent on the day prior to the June 8 meeting stated that no manifestation determination would be conducted. Although the Notice of Case Conference did not state the purpose of the June 8 meeting, the purpose was indicated in the letter from the director of special education to the parent to which the Notice was attached. Therefore, no violation of 511 IAC 7-27-2(d) is found.
5. Finding of Fact #10 indicates that the student received two disciplinary referrals prior to the April 12, 2001, case conference committee meeting. Finding of Fact #9 reflects that the case conference committee discussed a manifestation determination but did not complete the determination, concluding instead that a functional behavioral assessment should be conducted. The assessment was completed, the case conference committee has reviewed the information, and a behavioral intervention plan and revisions to the IEP have been proposed. However, no plan or IEP revisions have yet been agreed upon for the 2001-2002 school year. Finding of Fact #7 indicates that on June 5, 2001, the parent requested a manifestation determination be conducted at the June 6 case conference committee meeting as a continuation of the manifestation determination that had been initiated at the April 12 case conference committee meeting. Although the notes from the case conference committee meeting on June 6 indicate that a manifestation determination was one of the purposes for reconvening the case conference committee on June 8, the director subsequently advised the parent that the manifestation determination would not occur at that time. A manifestation determination may be used, subsequent to a student's misconduct that resulted in disciplinary action, to determine if the behavior is a manifestation of the student's

disability. If a manifestation is determined, the behavior is to be addressed by revisions to the student's IEP, a change in placement, or a behavioral intervention plan. A manifestation determination may not be used for behaviors that have not yet occurred; where untoward behaviors are contemplated, a behavioral intervention plan is warranted. Because there is no clear documentation that the parent withdrew the request for the CCC to conduct a manifestation determination, and no manifestation determination has been made regarding the Student's misconduct in March, a violation of 511 IAC 7-27-4(a)(3) occurred.

DISCUSSION:

511 IAC 7-29-6 requires the school to convene the case conference committee to conduct a manifestation determination when the school decides to expel a student with a disability or place the student in an interim alternative educational setting. This rule describes the situations in which a manifestation determination **must** be conducted. However, the rule does not preclude a parent or the school from requesting that a manifestation determination be conducted in other situations when a student with a disability is facing disciplinary action. Therefore, when a student is subject to disciplinary action, and a parent (or teacher or administrator) requests that a case conference committee be convened for the purpose of conducting a manifestation determination regarding the behavior resulting in the disciplinary action, the school is required to convene the case conference committee (in accordance with 511 IAC 7-27-4(a)(3)) and conduct the manifestation determination. The principle is the same whether the student is facing expulsion or a lesser disciplinary action. The student may not be expelled or subjected to other disciplinary action for behavior that the case conference committee determines to be a manifestation of the student's disability.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Penn-Harris-Madison School Corporation and the Mishawaka-Penn-Harris-Madison Joint Services shall:

1. Provide an assurance statement indicating that the use of the one page copy of the parental rights, previously mailed with the Notice of Case Conference will no longer be used with Notices sent out after July 12, 2001, and that future Notices shall be provided in an "easy to read format." The assurance statement must be provided the Division of Special Education no later than August 1, 2001.
2. Provide an assurance statement that the school will respond to a parent's request to amend educational records within ten business days of the school's receipt of such request. The assurance statement must be provided to the Division of Special Education no later than August 1, 2001.
3. Reconvene the case conference committee no later than August 31, 2001, to conclude the manifestation determination for the disciplinary referrals that occurred in March 2001, and complete the student's IEP for the 2001-02 school year. A copy of the case conference committee report and IEP shall be submitted to the Division of Special Education no later than September 7, 2001.

